

Memorandum

**Date:**

July 24, 2007

To:

Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From:

George M. Burgess
County Manager

Supplement #2 to

Agenda Item No. 12(A)7

Subject:

Supplement No. 2 : Port of Miami Tunnel Project Tri-Party Master Agreement

This Supplement No. 2 is provided to present to the Board the revised black-lined version of the Tri-Party Master Agreement that was described in Supplement No. 1 but represented by a prior version that was inadvertently attached to Supplement No. 1.

As previously described in Supplement 1, none of the revisions increase the County's obligations and the more significant changes are listed again as follows:

1. The reference to the Florida State Board of Administration in the definition of Annual Rate on page 4 should be replaced with a reference to the Florida Department of Financial Services.
2. The term was revised to make it clear that the Agreement ends after Substantial Completion and all obligations are paid.
3. Section 5(d) was modified to eliminate the exposure of the City and the County with respect to any delays in the execution of the operative documents with the Concessionaire.
4. The Contingency Reserves are not subject to the Annual Rate.
5. The County and City easements shall be returned in safe condition.
6. The payment obligations in Sections 5 and 6 are for clarification purposes and not substantive.

A handwritten signature in black ink, appearing to read "G. Burgess", written over a horizontal line.

Assistant County Manager

DRAFT July 17,19, 2007

MASTER AGREEMENT

for the

**PORT OF MIAMI TUNNEL AND
ACCESS IMPROVEMENT PROJECT**

among

Florida Department of Transportation

and

Miami-Dade County

and

The City of Miami

Dated _____, 2007

MASTER AGREEMENT

PORT OF MIAMI TUNNEL AND ACCESS IMPROVEMENT PROJECT

This Master Agreement (this "Agreement") is entered into and is effective as of _____, 2007 by and among the State of Florida Department of Transportation, an agency of the State of Florida ("FDOT"), Miami-Dade County ("MDC"), a political subdivision of the State of Florida, and the City of Miami ("City"), a municipal corporation of the State of Florida, collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, FDOT promotes the integration of transportation and land use planning to further public-private transportation purposes, commercial uses and economic development; and,

WHEREAS, FDOT proposes to develop, design, construct, finance, operate and maintain the Port of Miami Tunnel and Access Improvement Project (the "Project") through a public-private partnership pursuant to FDOT's enumerated powers and duties under sections 334.30 and 334.044, Florida Statutes; and,

WHEREAS, the public aspect of the Project is being undertaken with financial support from MDC and the City and with assistance from the Port of Miami (the "Port," a department of MDC) and from the Miami-Dade Water and Sewer Department ("MDWSD," a department of MDC); and,

WHEREAS, the primary components of the Project are the widening of the MacArthur Causeway Bridge, construction of a tunnel connection between Watson Island and Dodge Island (the "Tunnel"), and modifications to the Port of Miami roadway system; and,

WHEREAS, the Project will be owned by FDOT; and,

WHEREAS, FDOT issued a Request for Proposal ("RFP") to three interested proposer groups requesting that they submit a proposal for the financing, design, construction, operation and maintenance of the Project (the "Concession"), reviewed and evaluated the proposals submitted by the three proposer groups and selected a preferred proposer; and,

WHEREAS, if FDOT awards the Concession to the competitively selected proposer

group (the "Concessionaire"), it will enter into an agreement with the Concessionaire (the "Concession Agreement") having a thirty-five (35) year term (which might be extended under certain circumstances pursuant to the Concession Agreement), whereby the Concessionaire will design, construct and finance the Project and will be responsible for operation, maintenance and repair of the O&M Segments and other facilities; and,

WHEREAS, MDC and the City have reviewed the RFP documents, including the form of the Concession Agreement; and,

WHEREAS, FDOT has incurred and continues to incur significant costs to develop the Project, including for engineering, technical, legal, financial, insurance and other advisory costs as well as in-house costs; and,

WHEREAS, the Parties have agreed that MDC and the City will each make certain contributions of cash and right of way to fund a portion of the cost of procurement, design, construction, operation and maintenance of the Project; and,

WHEREAS, this Agreement is intended to provide the framework for the Parties to accomplish their respective objectives and to define their respective obligations to facilitate the financing, construction, operation and maintenance of the Project;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals and Exhibits. The foregoing Recitals and the attached Exhibits are incorporated herein and made a part of this Agreement.

2. Definitions.

The capitalized terms listed below have the following meanings:

"Additional Insured Coverage" has the meaning set forth in Section 16.

"Additional Insured Status/Existing Contracts" has the meaning set forth in Section 16.

“Agreement” has the meaning set forth in the first paragraph.

“Annual Rate” means the state fiscal year net average annual rate of interest paid on funds in the Florida Treasury Special Purpose Investment Account administered by the Florida Department of Financial Services, or its successor. The average shall be calculated using rates between the date payment is due and the date payment is made, with interest compounded annually at June 30.

“Availability Payments” has the meaning set forth in Appendix 1 to the Concession Agreement.

“Base Costs” means Construction Costs plus Soft Costs.

“Capital Costs” means the sum of the Construction Costs, Soft Costs and Extra Costs, including costs of termination as described in Section 6.a., as verified by an audit conducted after Substantial Completion in accordance with the Concession Agreement.

“City” has the meaning set forth in the first paragraph.

“City Annual MAP Contribution” has the meaning set forth in Section 6.c.(1).

“Concept of Operations Report” has the meaning set forth in Appendix 1 to the Concession Agreement.

“Concession Agreement” has the meaning set forth in Recitals.

“Concessionaire” has the meaning set forth in Recitals.

“Construction Costs” means projected construction and design costs for the Project, which as of the effective date hereof are estimated to be, but which may exceed, Six Hundred Nine Million Eight Hundred Eighty-Eight Thousand Eight Hundred Eighty-Eight Dollars (\$609,888,888).

“Delay Costs” has the meaning set forth in Appendix 1 to the Concession Agreement.

“Direct Costs” means FDOT engineering, financial advisory, legal, insurance advisory,

construction, engineering and inspection costs incurred after execution of the Concession Agreement and prior to Substantial Completion, plus Port engineering costs incurred in connection with review of design submittals related to the work on Dodge Island only. As of the effective date hereof, Direct Costs are estimated to be, but may exceed, Fifty Million Dollars (\$50,000,000).

“Existing Coverage” has the meaning set forth in Section 16.

“Extra Costs” means costs payable by FDOT pursuant to the Concession Agreement in addition to Construction Costs and Soft Costs, including, but not limited to, Extra Work Costs, Delay Costs, safing up costs under Section 7, payments of Availability Payments prior to achievement of Substantial Completion due to Relief Events, and the amount of Availability Payments due as a result of achievement of Substantial Completion before the substantial completion date included in the Project schedule made part of the Concession Agreement, less net actual recoveries from insurance, letters of credit, other performance guarantees and settlements, and excluding any cost solely and exclusively arising from either FDOT Project Changes or MDC Project Changes.

“Extra Work Costs” has the meaning set forth in Appendix 1 to the Concession Agreement.

“FDOT” has the meaning set forth in the first paragraph.

“FDOT Project Change” means, for purposes of this Agreement only, a change to the Project solely, voluntarily and unilaterally incurred by FDOT of its singular discretion which directly causes Extra Costs to be incurred. Without limiting the foregoing, for purposes of this Agreement only, FDOT Project Changes do not include any other changes to the Project, including without limitation changes arising from or relating to (i) the occurrence of Relief Events, (ii) any acts, omissions, delays or requests of MDC or the City, (iii) any breach or non-performance by the Concessionaire of the Concession Agreement or by MDC or the City of this Agreement, (iv) a change related to making the Project more functional, or (v) an MDC Project Change.

“FEC” has the meaning set forth in Section 9.

“Final Acceptance” means the final completion of the Project, as more fully defined in Appendix 1 to the Concession Agreement.

“General Contingency” means the contingent obligation created hereunder, and funded if required as set forth in Section 6.b.(2), to be used as a source of payments for Extra Costs.

“Geotechnical Contingency Reserve” means the contingency reserve account (as more fully defined in Appendix 1 to the Concession Agreement) to be created and funded hereunder to fund potential Extra Costs and, in the event of MDC’s non-performance of its obligations under this Agreement, to reimburse FDOT for MDC’s share of any Direct Costs or costs related to early termination of the Concession Agreement.

“MDC” has the meaning set forth in the first paragraph.

“MDC Project Change” means, for purposes of this Agreement only, a change to the Project solely, voluntarily and unilaterally incurred by MDC of its singular discretion which directly causes Extra Costs to be incurred on the Project. This definition of “MDC Project Change” shall be subject to and, to the extent of any conflict, shall be governed by the provisions of Section 5.b. hereof. Without limiting the foregoing, for purposes of this Agreement only, MDC Project Changes do not include any other changes to the Project, including without limitation changes arising from or relating to (i) the occurrence of Relief Events, (ii) any acts, omissions, delays or requests of FDOT or the City, (iii) any breach or non-performance by the Concessionaire of the Concession Agreement or by FDOT or the City of this Agreement, or (iv) an FDOT Project Change.

“MDWSD” has the meaning set forth in Recitals.

“NTP 1” means the notice of proceed from FDOT to the Concessionaire for the commencement of certain work, as more fully defined in Appendix 1 to the Concession Agreement.

“O&M Segments” means those portions of the Project which will be operated and maintained by the Concessionaire after Substantial Completion, as more fully defined in Appendix 1 to the Concession Agreement.

“ORT Facilities” means open road toll facilities that MDC might develop, design, permit, finance, construct, install, operation, maintain, repair and remove, as more fully described in Section 5.c.

“Parties” has the meaning set forth in the first paragraph.

“Port” has the meaning set forth in Recitals.

“Project” has the meaning set forth in Recitals.

“Project Schedule” means the schedule for design and construction of the Project, as more fully defined in Appendix 1 to the Concession Agreement.

“Project Permanent and Temporary Right of Way” has the meaning set forth in Section 7.

“Relief Events” means those events, occurrences and circumstances which potentially entitle Concessionaire to schedule and/or cost relief under the Concession Agreement, as more fully defined in Appendix 1 to the Concession Agreement.

“Reserve Account” has the meaning set forth in Section 6.c.(1)(b).

~~“Reserve for Relief Events” means the contingency reserve account to be created and funded hereunder and to be used during the Project as a source of payments for Relief Events.~~

“RFP” has the meaning set forth in Recitals.

“Soft Costs” means insurance and certain soft costs incurred by Concessionaire in connection with construction of the Project, which as of the effective date hereof are estimated to be, but which may exceed, Fifty-Four Million Eight Hundred Thirty-Six Thousand Five Hundred Eighty-Two Dollars (\$54,836,582).

“Substantial Completion” means construction of the Project is substantially complete, as more fully defined in Appendix 1 to the Concession Agreement.

“Tunnel” has the meaning set forth in Recitals.

3. Term. The term of this Agreement will commence on the date of its execution and will terminate on the date both of the following conditions are satisfied: (1) the construction

phase of the Concession terminates is completed and the maintenance and operations phase has begun, as defined in the Concession Agreement, and (2) the parties have paid and performed their respective obligations under this Agreement.

4. Project Administration.

a. FDOT, with the financial support of MDC and the City, has undertaken to develop the Project. FDOT, with the involvement of MDC in the evaluation of proposals, has completed a competitive procurement process to select and contract with a Concessionaire to finance, design, construct, operate, maintain, and repair the Project pursuant to the Concession Agreement to be executed by and between FDOT and the Concessionaire. FDOT shall at all times administer, manage, and oversee the Project, the Concessionaire and its Contractors (of all tiers), in accordance with the terms and conditions of the Concession Agreement consistent with FDOT policy, practice and procedure, and in accordance with the applicable Laws of Florida. It is understood by the Parties that MDC and the City have no ownership interest in the Project and that the Project shall be owned by FDOT.

b. FDOT shall assure that, prior to commencing work on the Project, the Concessionaire obtains the performance and payment security required under the Concession Agreement. The Parties agree that in the event that a Court with jurisdiction over FDOT enters a final, non-appealable judgment requiring that different or additional performance and payment security be provided by the Concessionaire than the security required under the Concession Agreement, any additional costs, expenses and fees arising out of or relating to the procurement of such different or additional security shall be borne on a pro-rata basis by FDOT, MDC and the City.

5. Contribution Amounts. Total estimated funding obligations of FDOT, MDC and the City, collectively, are currently estimated to be Nine Hundred Fifteen Million Dollars (\$915,000,000), which is composed of Construction Costs of Six Hundred Nine Million Eight Hundred Eighty-Eight Thousand Eight Hundred Eighty-Eight Dollars (\$609,888,888), Soft Costs of Fifty-Four Million Eight Hundred Thirty-Six Thousand Five Hundred Eighty-Two Dollars (\$54,836,582), Direct Costs of Fifty Million Dollars (\$50,000,000), the Geotechnical Contingency Reserve of One Hundred Fifty Million Dollars (\$150,000,000), and the Reserve for

~~Relief Events~~General Contingency of Fifty Million Two Hundred Seventy-Four Thousand Five Hundred Thirty Dollars (\$50,274,530).

a. **Parties' Contributions.** In accordance with the terms of this Agreement, MDC and the City agree to contribute money and rights of way to the Project as provided in this Agreement, and in the manner described in Section 6. Subject to the limits described in this Section 5, MDC and the City shall collectively contribute fifty percent (50%) of Direct Costs plus fifty percent (50%) of the Capital Cost of the Project, except for Extra Costs arising solely and exclusively from an FDOT Project Change. In addition, MDC shall contribute fifty percent (50%) of the Geotechnical Contingency Reserve and also fifty percent (50%) of the ~~Reserve for Relief Events~~General Contingency. Except as provided herein for MDC Project Changes and ~~costs required to be paid pursuant to Section 5.d.~~, and except as provided in the ~~final~~penultimate sentence of this Section 5.a., the funding obligation of MDC and the City is collectively limited to Four Hundred Fifty-Seven Million Five Hundred Thousand Dollars (\$457,500,000). As detailed in Section 6 of this Agreement, the initial contribution of MDC and the City will total Four Hundred Thirty-Two Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollars (\$432,362,735), of which MDC will contribute Three Hundred Seventy-Seven Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty Five Dollars (\$377,362,735, or 87.28%) and the City will contribute Fifty-Five Million Dollars (\$55,000,000, or 12.72%). MDC shall thereafter be wholly (100%) responsible for contributing any additional amounts to the General Contingency authorized by this Agreement, up to the collective MDC and City limit of Four Hundred Fifty-Seven Million Five Hundred Thousand Dollars (\$457,500,000), and the City shall have no obligation beyond its initial contribution of Fifty-Five Million Dollars (\$55,000,000). MDC and the City recognize and agree that the FDOT total allocation shall be limited to Four Hundred Fifty-Seven Million Five Hundred Thousand Dollars (\$457,500,000) for Capital Costs, Direct Costs, the Geotechnical Contingency Reserve, and the ~~Reserve for Relief Events~~General Contingency. The Parties recognize that future year amounts will be included in the FDOT work plan as required by law under section 334.30 of the Florida Statutes, subject to annual legislative appropriation as required by law. Furthermore, MDC and the City acknowledge that the cost will be shared between FDOT and MDC/City on a prorated share of 50/50 for the Capital Costs and Direct Costs up to these total amounts. The Parties hereby acknowledge and agree that the amounts set forth in this Section 5.a. are expressed as present

value costs in 2007. To the extent payments of these Capital Costs or Direct Costs contributions are made in future years and not 2007, the Parties agree that their future obligations shall be adjusted by applying the Annual Rate to any amounts paid after 2007. The Annual Rate shall not apply to payments for the Geotechnical Contingency Reserve or the General Contingency.

b. **Project Changes.** MDC and FDOT recognize and agree that the operation of the Port may change during the term of this Agreement and that such changes and other factors may make it desirable for MDC to propose modifications to the Project. If MDC requests a MDC Project Change, FDOT and MDC agree to confer to determine the feasibility of such changes, increased costs, schedule and other impacts on the design, construction, operation and maintenance of the Project. Any such changes shall be consistent with and not affect or interfere with FDOT's rights and obligations under the Concession Agreement or performance by Concessionaire of its obligations under the Concession Agreement. MDC shall be responsible for funding the entire cost of accomplishing such MDC Project Changes and any additional operation and maintenance costs resulting therefrom, including amounts directly incurred by FDOT and amounts payable by FDOT under the Concession Agreement. The cost of MDC Project Changes and FDOT Project Changes are not part of the funding obligations created under Section 5.a. of this Agreement; such costs shall be borne by MDC for MDC Project Changes and by FDOT for FDOT Project Changes, over and above their individual funding obligations under Section 5.a. Under no circumstances shall the City be responsible for the cost of any MDC Project Changes or FDOT Project Changes.

c. **ORT Facilities.** FDOT has been informed by MDC that MDC may in the future desire to construct, operate and maintain open road tolling facilities and charge, collect, and retain tolls for the use of the Tunnel and Port Bridge (the "ORT Facilities"). If MDC desires to proceed with the development of the ORT Facilities, MDC must notify FDOT of such decision in writing within ~~two~~three (23) years of the execution of this Agreement. Upon receipt of such notice, FDOT shall provide reasonable assistance to MDC in facilitating MDC's efforts to construct, operate and maintain open-road tolling facilities and to charge, collect, and retain such tolls ~~for the use of the ORT Facilities~~. Any development, funding, design, permitting, construction, operation and maintenance of ORT Facilities by MDC shall be consistent with and not affect or interfere with FDOT's rights and obligations under the Concession Agreement or performance by Concessionaire of its obligations under the Concession Agreement. MDC shall

be responsible for all costs and expenses for the funding, design, permitting, federal approval, construction, financing, operation, maintenance, repair, replacement and ultimate removal of the ORT Facilities, and none of such costs and expenses shall constitute or be deemed to be a Project cost.

d. ~~Costs of Delay.~~ MDC and the City shall be responsible to FDOT for any Extra Costs**Consequences of Delay to Procurement Timeline.** The Parties recognize that there may be increased costs, including increases in the Concessionaire's prices, resulting from delays by MDC or the City in discharging their obligations necessary to meet the procurement timeframe established in the RFP. Such costs shall be in addition to and above the individual funding obligations of the City and MDC described under Section 5.a. FDOT shall notify MDC and the City of any such costs in writing within thirty (30) days after the effective date of FDOT reserves the right not to enter into the Concession Agreement, and payment shall be due forty-five (45) days after the date of the notice if FDOT determines that doing so is no longer feasible as a result of such increased costs.

6. **Local Contribution Schedule.** MDC agrees to ~~make an initial contribution~~ incontribute an amount not to exceed Three Hundred Seventy-Seven Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollars (\$377,362,735), ~~which includes the donation of right of way valued at Forty-Five Million Dollars (\$45,000,000)~~ except as provided in Section 6.b.(5) below, and payable in accordance with Section 6.b below. The City agrees to contribute Fifty-Five Million Dollars (\$55,000,000), ~~which includes the donation of right of way valued at Five Million Dollars (\$5,000,000) and a cash contribution in the principal amount of Fifty Million Dollars (\$50,000,000),~~ payable in accordance with Section 6.c below. MDC and the City covenant and agree to budget and appropriate in their respective annual budgets, by amendment, if necessary, from non-ad valorem revenues, amounts sufficient to pay its respective cash contribution and all other amounts payable hereunder. Such covenant to budget and appropriate does not create any lien upon or pledge of such non-ad valorem revenues, nor does it preclude MDC or the City from pledging in the future its non-ad valorem revenues, nor does it require MDC to levy and collect any particular non-ad valorem revenues, nor does it give FDOT a prior claim on the non-ad valorem revenues as opposed to claims of general creditors of MDC or the City as applicable.

~~a.~~ **a. Contribution Commitment.** The cash contributions by MDC and the City are irrevocable, unconditional and not subject to refund or repayment except under the following circumstances:

(1) If FDOT in its sole discretion terminates the Project prior to the issuance of NTP 1, the portion of MDC's cash contribution remaining, if any, after FDOT has been reimbursed fifty percent (50%) of both the Direct Costs and the termination payment due the Concessionaire under the Concession Agreement (less the City's pro-rata share of Direct Costs and the termination payment), will be refunded or repaid to MDC, and the City shall remit to FDOT the City's share of both the Direct Costs and the termination payment due at the time of termination to the Concessionaire under the Concession Agreement in accordance with Section 6.c.(3) below.

(2) In acknowledgement and due respect for the financial contributions and anticipated funding sources to be utilized by MDC and the City in their respective funding contributions to the Project, FDOT agrees to provide advance notice to MDC and the City if FDOT determines to terminate the Project at any time prior to the date of Substantial Completion. In the event the Project is terminated prior to Substantial Completion, MDC and the City shall be entitled to any remaining portion of the cash contributions by MDC and the City that are not applied to payment of Direct Costs or fully disbursed or payable by FDOT according to the terms of the Concession Agreement, plus MDC's and the City's pro rata portion of proceeds of insurance actually received by FDOT in the event of a covered loss that causes cancellation of the Project. The Parties acknowledge and agree that (i) under the Concession Agreement, in the case of termination prior to Substantial Completion, FDOT will be required under the Concession Agreement to make certain termination payments to the Concessionaire for the value of the works and, depending on the particular circumstances or termination scenario, pay other qualified costs incurred by the Concessionaire, and (ii) that any such payments are Capital Costs hereunder.

(3) In the event that all of the Geotechnical Contingency Reserve is not expended, fifty percent (50%) of the unexpended remainder will be refunded to MDC; provided, however, that such unexpended funds from the Geotechnical Contingency Reserve may also be used to pay and reimburse to FDOT: (i) the Extra Costs for Relief Events which occur prior to

Substantial Completion, except Extra Costs arising solely and exclusively from FDOT Project Changes and MDC Project Changes; (ii) any additional Availability Payments due as a result of achievement of Substantial Completion before the substantial completion date included in the Project schedule made part of the Concession Agreement; (iii) Availability Payments and additional Direct Costs due to Relief Events other than those Relief Event costs paid from the Geotechnical Contingency Reserve; and (iv) in the event of MDC's non-performance of its obligations under this Agreement, to reimburse FDOT for MDC's share of any Direct Costs or costs related to early termination of the Concession Agreement. No MDC funds or City funds will be applied to FDOT Project Changes and no FDOT funds or City funds will be applied to MDC Project Changes.

~~b. MDC Contribution.~~

~~(1) Initial Contribution.~~ b. MDC Contribution. MDC shall make an ~~initial total cash contribution~~ the following payments to cover its funding obligation of Three Hundred Thirty-Two ~~Seventy-Seven~~ Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollars (\$332,362,735), of which amount One Hundred Seventy-Five Million Dollars (\$175,000,000) shall be due upon the effective date of the Concession Agreement and payable as follows: MDC shall pay One Hundred Million Dollars (\$100,000,000) toward Capital Costs within one hundred twenty (120) days of the effective date of the Concession Agreement, plus interest at the Annual Rate from the effective date of the Concession Agreement; and MDC shall provide 377,362,735).

(1) MDC shall donate right of way valued at Forty-Five Million Dollars (\$45,000,000), which sum shall not be subject to the Annual Rate.

(2) MDC shall contribute Seventy-Five Million Dollars (\$75,000,000), which sum shall not be subject to the Annual Rate, toward the Geotechnical Contingency Reserve in the form of an irrevocable letter of credit (the form and issuer of which is acceptable to FDOT in its sole discretion) delivered to FDOT at the address designated by FDOT on or before the ~~execution~~ effective date of the Concession Agreement. ~~The~~ FDOT will provide notice to MDC of any draws on the Geotechnical Contingency Reserve.

(3) MDC shall contribute One Hundred Million Dollars (\$100,000,000) in cash within one hundred twenty (120) days of the effective date of the Concession Agreement,

plus interest accrued thereon at the Annual Rate from the effective date of the Concession Agreement until paid. Of this amount, Twenty-Five Million Dollars (\$25,000,000) shall be applied to Direct Costs and the balance shall be applied to Capital Costs.

(4) MDC shall contribute One Hundred Fifty-Seven Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollar (\$157,362,735) remaining balance of MDC's total cash contribution of Three Hundred Thirty-Two Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollars (\$332,362,735), plus interest accrued thereon at the Annual Rate from the effective date of the Concession Agreement until paid, which amount shall be paid in a single lump sum payment by wire transfer in conformance with the instructions contained in Appendix 1, and without further invoice, notice or demand therefore, on or before ten (10) days prior to the date of Substantial Completion.

(2) Additional Contribution. FDOT will provide notice to MDC of any draws on the Geotechnical Contingency Reserve or on the Reserve for Relief Events. FDOT will provide notice to MDC if it reasonably believes5) Contingent upon the condition described in this paragraph, MDC shall make an additional contribution of up to, but no more than, Twenty-Five Million One Hundred Thirty-Seven Thousand Two Hundred Sixty-Five Dollars (\$25,137,265) toward the General Contingency, which sum shall not be subject to the Annual Rate. The condition for this contribution is that costs of the Project will increasehave increased such that the total of (i) Capital Costs and Direct Costs of the Project to be shared between MDC and the City and (ii) Geotechnical Contingency Reserve and Reserve for Relief Events to be shared by MDC would exceed Four Hundred Thirty-Two Million Three Hundred Sixty-Two Thousand Seven Hundred Thirty-Five Dollars (\$432,362,735), in which case MDC shall be responsible for the additional contribution up to the collective limit. FDOT will provide written notice to MDC if it reasonably believes that this condition will be satisfied, in which case FDOT and MDC will share equally (50% each) in payment of such additional costs, up to the limit of Twenty-Five Million One Hundred Thirty-Seven Thousand Two Hundred Sixty-Five Dollars (\$25,137,265) each. MDC's contribution to the General Contingency will not cause the sum of MDC's and the City's contributions to exceed the collective cap of Four Hundred Fifty-Seven Million Five Hundred Thousand Dollars (\$457,500,000) as established in Section 5 of this Agreement. Any such additional payment shall be made within forty-five (45) days of written request by FDOT to MDC. FDOT will provide notice to MDC of any draws on the General

Contingency. MDC will be fully responsible for Extra Costs due to MDC Project Changes, the occurrence of a Relief Event caused by MDC or an act, omission or delay of MDC.

~~(3) Late Payment.~~ With the exception of the election by MDC to provide its Seventy-Five Million Dollar (\$75,000,000) contribution to the Geotechnical Contingency Reserve in the form of an irrevocable letter of credit and the timely delivery of such letter of credit to FDOT, if MDC fails to make payment of its cash contribution in full on or before the due date, interest shall accrue on all amounts due and owing to FDOT by MDC at the Annual Rate until paid. This section shall not be construed to excuse late payments.

~~e. City Cash Contribution.~~ The City's cash contribution, in the principal amount of Fifty Million Dollars \$50,000,000, plus interest accrued thereon at the Annual Rate from the date of execution of the Concession Agreement, shall be paid as herein provided.

c. City Contribution. The City shall make the following payments to cover its funding obligation of Fifty-Five Million Dollars (\$55,000,000).

(1) The City shall donate right of way valued at Five Million Dollars (\$5,000,000), which sum shall not be subject to the Annual Rate.

(1)-(2) The City shall contribute cash in the principal amount of Fifty Million Dollars (\$50,000,000), plus interest accrued thereon at the Annual Rate from the effective date of the Concession Agreement until paid. The City shall have the option, in its sole discretion, to make its cash contribution in annual installments during the original term of the Concession Agreement (the "City Annual MAP Contribution") or in a lump sum. The amount of the City Annual MAP Contribution or the Lump Sum shall be calculated as follows:

(a) **Lump Sum.** The lump sum payment shall be in the principal amount of Fifty Million Dollars (\$50,000,000), plus interest accrued thereon at the Annual Rate from the ~~execution~~effective date of the Concession Agreement through the date of Substantial Completion. The lump sum payment shall be made within five (5) business days after the date of Substantial Completion, provided the City has elected this option and provided written notice to FDOT of this election, as provided in Section 6.c.(2) below. If the City fails to make payment of the lump sum payment in full on or before the due date, interest shall accrue on all amounts due and owing to FDOT by the City at the Annual Rate until paid.

(b) **Annual Payments.** The City's Annual MAP Contribution shall be calculated as follows:

1. A notional deposit of Fifty Million Dollars (\$50,000,000) would be placed in a reserve account (the "Reserve Account") on the effective date of execution of the Concession Agreement that will earn interest at the Annual Rate.

2. Sixty (60) days prior to the anticipated date of Substantial Completion, FDOT will notify the City of such pending event and provide a calculation of the annual amount payable from the monies on deposit in the Reserve Account ("City Annual MAP Contribution") within ten (10) days of the anticipated date of Substantial Completion.

3. The actual amount of the City Annual MAP Contribution shall be the amount calculated by FDOT pursuant to Section 6.c.(12)(b)4. below, and shall be due and payable on July 1 of each and every year during the original term of the Concession Agreement, with the exception of the first payment, which shall be pro-rated on the basis of the number of days from the date of Substantial Completion until July 1, and the last payment, which shall be equal to the balance in the Reserve Account as of July 1 immediately prior to the expiration of the original term of the Concession Agreement.

4. FDOT will calculate the City Annual MAP Contribution as that constant amount which could be withdrawn from the Reserve Account each and every year during the original term of the Concession Agreement after Substantial Completion such that the balance in the Reserve Account on the expiration of the original term of the Concession Agreement, taking into account estimated future interest earnings on the amount deposited therein by the City, would be zero. At the City's option, upon electing to make the City Annual MAP Contribution, after receiving notice of the first payment date as set forth in Section 6.c.(12)(b)2. immediately above, FDOT also may calculate the amount that could be withdrawn from the Reserve Account each and every year during the original term of the Concession Agreement, beginning on the date of Substantial Completion, were the withdrawal amount to be adjusted annually to the fixed rate paid by FDOT according to the terms of its inflation hedge of Availability Payments to the Concessionaire, such that the balance in the Reserve Account on the expiration of the original term of the Concession Agreement, taking into account future interest earnings, will be zero.

5. No later than May 1 of each year, FDOT shall notify the City of the City Annual MAP Contribution as recalculated to reflect actual interest earnings as of such date and estimated future interest earnings. The amount of the final City Annual MAP Contribution payable at the expiration of the original term of the Concession Agreement shall be equal to the balance in the Reserve Account.

(c) **Letter of Credit.** To further secure either its lump sum or annual payment obligations hereunder, the City agrees to provide to FDOT an irrevocable letter of credit from a bank or a financial institution with a rating from either Moody's Investors Service or Standard & Poor's in the second highest rating category by such agency (without regard to gradation) in amount of Fifty Million Dollars (\$50,000,000) in form and substance satisfactory to FDOT and which shall remain in effect as long as the City has obligations hereunder; provided, however that the amount may be reduced annually to reflect the City's outstanding obligations. FDOT must be named as the beneficiary of such letter of credit and FDOT shall be entitled to draw on such letter of credit in the event the City fails to make its contribution hereunder. Such letter of credit must be provided no later than the earlier of (i) thirty days from the effective date of ~~execution~~ of this Agreement or (ii) the effective date of ~~execution~~ of the Concession Agreement.

~~(2)-(3)~~ If the City elects to pay the City Contribution in a Lump Sum, it must give written notice to FDOT of this election not later than thirty (30) days after receipt by it of FDOT's notice of the first payment date as set forth in Section 6.c.(~~12~~)(b)2. above. Failure to elect the Lump Sum payment option will be deemed acceptance of the City Annual MAP Contribution option.

~~(3)-(4)~~ In the event the Project is terminated by FDOT prior to the date of Substantial Completion, the City shall pay to FDOT the City's prorata share (12.72%) of fifty percent (50%) of the total Direct Costs and Capital Costs so paid or incurred by FDOT up to the date of termination, subject to the limits specified in Section 5 of this Agreement.

~~d.~~ **d. Application of Local Funds.** The cash contributions of MDC and the City and interest accrued thereon shall be applied to Capital Costs and Direct Costs. Nothing herein shall prevent or restrict FDOT from using such funds as collateral or for payments to the

Concessionaire upon the achievement of Project milestones as set forth in the Concession Agreement.

e. Credit of Third-Party Recoveries. Any money received by FDOT for the benefit of the Project from a source of security not proffered by MDC or the City, such as insurance proceeds or money from a letter of credit or bond posted by the Concessionaire, shall be credited to the Parties according to their actual pro rata contributions, but shall not be deemed to alter the Parties' contribution obligations or limits as specified in Section 5 of this Agreement.

f. Wire Transfer of Cash Payments. All cash payments to FDOT under this Section shall be made by wire transfer using the following information:

Bank of America
Account # 001009068974
ABA # 026009593
Chief Financial Officer of Florida
Re: DOT - Type K 11-79

The reference line shall contain "DOT - Type K 11-79"

7. Right of Way Contribution. MDC and the City each agrees to grant, convey, assign and transfer to FDOT by temporary construction easements and perpetual easements, substantially in the forms attached to this Agreement, the permanent and temporary right of way required for construction and operation of the Project ("Project Permanent and Temporary Right of Way") on or before the effective ~~date of execution~~ of the Concession Agreement. The Parties shall grant, convey, assign and transfer to FDOT such additional temporary construction easements and perpetual easements or modify the descriptions of existing easements as FDOT determines is necessary to accommodate construction of the Project in accordance with approved final design plans and drawings, and execute and deliver such additional instruments as FDOT determines is necessary to evidence and record the granting and conveyance of such easements and interests. MDC and the City each acknowledges that FDOT will grant Concessionaire a right of entry under the Concession Agreement, and any delay in transfer of such interests will cause FDOT to incur additional costs and liabilities to the Concessionaire under the Concession Agreement, and agrees to indemnify and hold harmless FDOT against any such costs and liabilities. In the event that this Agreement terminates in accordance with Section 3, then the Project Permanent and Temporary Right of Way granted, conveyed, assigned and transferred by

MDC and the City by temporary construction easements and perpetual easements shall revert to MDC and the City, as applicable, and the parties shall execute and deliver necessary and appropriate instruments and other documents required therefor as provided in Section 18.j. In the event of such termination, FDOT agrees to perform such safe up measures as it deems appropriate in its sole engineering judgment. MDC and the City acknowledge and agree that under no circumstances will FDOT have any obligation, responsibility or liability to restore the lands subject to the easements to their condition at the time of the original grants to FDOT pursuant to this Agreement. The Parties' rights and obligations under this Section 7 shall survive the granting and recording of the easements required by this Section. The Parties shall cause this Agreement or a memorandum thereof to be recorded in the public record, intending that it provide notice of the Parties' respective rights and obligations in connection with the real property that is the subject of the easements.

a. **Conveyances.** Improvements resulting from the Project are anticipated to impact property owned by MDC, portions of which are leased to various third parties. MDC shall convey these properties to FDOT free of encumbrances and environmental liabilities.

b. **Construction Easements and Perpetual Easements.**

(1) **MDC Temporary Construction Easements.** MDC grants to FDOT temporary construction easements for the duration of staging for construction, construction, and related construction activities for the Project, as follows:

(a) Parcel 703, as depicted and described on attached composite Exhibit A.

(b) Parcel 704, as depicted and described on attached composite Exhibit B.

(c) Parcel 705, as depicted and described on attached composite Exhibit C.

(2) **MDC Perpetual Easements.** MDC grants to FDOT, in perpetuity and forever binding upon the Parties hereto and their respective personal representatives, administrators, successors and assigns, perpetual easements as follows:

(a) Parcel 802, as indicated and described on attached composite
Exhibit D.

(b) Parcel 803, as indicated and described on attached composite
Exhibit E.

(c) Parcel 804, as indicated and described on attached composite
Exhibit F.

(d) Parcel 805, as indicated and described on attached composite
Exhibit G

(e) Parcel 806, as indicated and described on attached composite
Exhibit H.

(3) **City Temporary Construction Easements.** The City grants to FDOT temporary construction easements for the duration of staging for construction, construction, and related construction activities for the Project, as follows:

(a) Parcel 701, as indicated and described on attached composite
Exhibit I.

(4) **City Perpetual Easements.** The City grants to FDOT, in perpetuity and forever binding upon the Parties hereto and their respective personal representatives, administrators, successors and assigns, perpetual easements as follows:

(a) Parcel 800, as indicated and described on attached composite
Exhibit J.

(b) Parcel 801, as indicated and described on attached composite
Exhibit K.

(5) **Right of Entry.** In addition to the above temporary construction easements, MDC shall provide Concessionaire and its Contractors with reasonable access to MDC owned property appurtenant and adjacent to the Project as needed from time-to-time for performance of the Work contemplated by the Concession Agreement.

8. Utility Relocation Issues.

a. **MDC-Owned Utilities.** The Concessionaire, pursuant to the terms of the Concession Agreement, will relocate all MDC-owned utilities (fiber optic, water main, water laterals, sewer lines, and sewer laterals) impacted by the Project. Upon relocation and acceptance of the relocation of the MDC-owned utilities by MDC, such utilities will be operated and maintained by MDC. The location and installation of new or replacement MDC-owned utilities and the operation and repair of MDC-owned utilities shall not interfere with the construction, operation or maintenance of the Project.

b. **Privately Owned Utilities.** The Parties understand that Florida Power & Light and Bellsouth, with respective reservations of rights to seek compensation, will relocate their utility lines impacted by the Project prior to construction.

9. FEC Railroad. The existing Florida East Coast Railroad ("FEC") railroad spurs within the Project limits will be relocated by the Concessionaire at its costs, in accordance with the plans set forth in the RFP specifications in kind to serve the Port. The Port shall execute agreements and documents necessary with Concessionaire relating to such relocation work. Such relocation will be coordinated with FEC and the Port to accommodate existing railroad and port operations and existing railroad usage patterns. In the event that FEC or the Port requires betterment to the existing level of service, the costs of said betterments will be borne by FEC or the Port. In no case will FDOT or the Concessionaire bear any of costs relating to such betterments.

10. Operations and Maintenance (O&M).

a. The Concessionaire's Roadway & Facilities O&M limits are defined as from the beginning of U-wall section on Watson Island to the end of the U-wall section on Dodge Island, including bored tunnel, cut-and-cover tunnel and U-wall structures. These areas include maintenance of all items within the boundaries that are furnished and installed by the Concessionaire.

b. The Roadway and Ancillary Facilities O&M limits also include the following:

- (1) Watson Island Substation Facility;
- (2) Dodge Island Operations Support Facility;

(3) Dodge Island Maintenance/Garage Facility;

(4) All portal flood gate structures, cross passageways/egress stair facilities, tunnel low point pump stations, all storm water pump stations, all parking areas and driveways to these facilities;

(5) TSCS equipment installed by the Concessionaire that is located within one mile of the Project Limits; and

(6) O&M of the interconnecting conduits, raceways, pipe, utilities, cable, manholes, pull boxes, and other components installed by the Concessionaire that connect to remote facilities that the Concessionaire is required to maintain. Examples include: Piping, conduits etc, from the Operations Support Facility to remote pump stations; conduit, cable, wiring, raceways, etc, from the Operations Support Facility to TSCS equipment located outside of the Roadway and Ancillary Facilities O&M Limits.

c. Landscape Maintenance Limits. The landscape maintenance areas are defined by the following:

(1) Watson Island

(a) Area bounded, on the south side by the southern Frontage Road and on the north side by the northern frontage road, including the Watson Island Substation Facility, all as defined in the Concession Agreement; and

(b) Any other landscaped area or islands that are created within the parking lots and driveways of the areas described.

(2) Dodge Island: Landscaping adjacent and appurtenant to:

(a) Portal/Flood Gate structure;

(b) The Dodge Island Maintenance Facility/Garage;

(c) The Dodge Island Operations Support Facility;

(d) The Egress Stair headhouses; and

(e) Any other landscaped area or islands that are created within the parking lots and driveways of the areas described.

11. Emergency Response.

a. The limits of incident response include the areas listed above as Concessionaire O&M and areas listed above as MDC O&M, respectively.

b. Incidents are categorized in five levels of response:

(1) Level 1: Breakdown or minor accident (no injuries) in one travel lane. Tunnel closure not required.

(2) Level 2: Single vehicle accident (with injuries) and one travel lane blocked. Tunnel closure of one lane or possibly one bore.

(3) Level 3: Multiple vehicle accident (with multiple injuries) and all travel lanes blocked. No major threat of explosion, fire or hazards. Tunnel closure of one bore.

(4) Level 4: Multiple vehicle accident (multiple injuries/fatalities) and tunnel bore blocked. Potential threat of fire, explosion, hazardous airborne material, and water contamination. May require evacuation of motorists. Tunnel closure of both bores.

(5) Level 5: Conditions same as Level 4 except that all travel lanes in one direction, plus one or more travel lanes in the opposite direction must be closed. Tunnel closure of both bores.

c. Concessionaire will provide 24/7 monitoring of the incident areas described above. Concessionaire's operators will monitor the facility under a 5-minute incident detection and response protocol. Based on operating procedures the operator shall notify the appropriate emergency response personnel. At a minimum, notifications will include the following and any other entities designated by the Parties:

- (1) Florida Highway Patrol
- (2) Miami-Dade County Police Department
- (3) Miami-Dade County Fire Department
- (4) City of Miami Fire Department
- (5) City of Miami Police Department
- (6) FDOT Road Rangers

(7) Concessionaire's Maintenance Staff/First Response Team

d. The Concessionaire will provide a First Response Team with required special equipment. The First Response Team will take command of incidents until the arrival of law enforcement or fire department personnel.

e. Fire/Life Safety Emergency. An Emergency Response Plan will be developed by the Miami-Dade County Fire Department and the City of Miami Fire Department during the design stage of the Project based upon review of the construction plans developed by the Concessionaire. Due to the infinite number of possible scenarios, either or both fire departments may be called to an emergency. Emergency response procedures will be developed by the Parties in conjunction with the Concessionaire.

12. Coordination. The Parties have exchanged information and reached agreement on aspects of the Project that will require continued cooperation and coordination, and the Concession Agreement and RFP documents were prepared in reliance on understandings and arrangements between the various public and private partners in the Project. MDC and the City each agrees that it will provide all reasonable and appropriate assistance necessary to enable FDOT to perform and observe its obligations and covenants under the Concession Agreement and RFP documents. MDC and the City each agrees to use reasonable efforts to provide information, data and the services and testimony of officials and employees to assist FDOT and the Concessionaire to obtain required government approvals and authorizations. MDC and the City each agrees to act with diligence in its review, evaluation, processing or issuing of any approvals and authorizations within its jurisdiction for the Project.

13. Direction to Third Parties. The Parties agree that the construction activities performed on the construction easements are significant and an integral part of the Project. As a result, MDC and the City will each ensure that all third parties claiming any right to use any of the construction easements granted by it do not interfere with the activities of the Concessionaire and its contractors and subcontractors and comply with all reasonable demands and requests made by FDOT concerning such use.

14. Ingress/Egress. FDOT, Concessionaire and their respective constructors, subcontractors, vendors and consultants will have ingress and egress to and from the construction

easements at all times and will secure such areas in a safe manner. MDC and the City will each reasonably secure areas within properties currently occupied by them, which are in close proximity to the construction easements and which are accessible to the traveling public. MDC and the Port are responsible for expediting any security arrangements necessary for the Concessionaire and its contractors and subcontractors to gain access to the construction sites for the Project in order to deliver the Project efficiently and as contemplated in the Project Schedule.

15. Leases and Contracts. Upon the signing of this Agreement, MDC and the City each represents that it has no knowledge of any leases, contracts, or agreements that would interfere with the performance of this Agreement and consummation of the transactions constituted hereunder, or of any outstanding uncured defaults pursuant to any leases, contracts and agreements affecting MDC properties or City properties. Should MDC or the City become aware of any such defaults, it will promptly notify FDOT and undertake to promptly cure or rectify such defaults.

16. Insurance. The Parties agree that prior to the execution of any future contract, other than the Concession Agreement, with consultants, contractors or other third parties for (a) the design, construction, staging of construction or related construction activities for the Tunnel and related road and highway improvements, or (b) the relocation of certain utilities affecting the Project, they shall cooperate in establishing the types and amounts of insurance coverage required. The Parties also agree to cooperate in approving the A.M. Best's Financial Strength Rating (or comparable rating for insurers not rated by A.M. Best that are acceptable to FDOT) for such insurance company and shall at a minimum show FDOT, MDC and the City, their respective employees, members, officers, agents, and successors as additional insureds under such coverage, except in the case of professional liability insurance and workers' compensation insurance ("Additional Insured Coverage"). The Additional Insured Coverage may include, but is not limited to: (a) commercial general liability insurance and property damage liability insurance; (b) automobile liability insurance; (c) FDOT, MDC and City protective liability insurance, if applicable; (d) railroad and utility owner protective liability insurance, if applicable; and (e) builder's risk insurance, if applicable. All insurance requirements for the Additional Insured Coverage shall be applicable to any consultant, subconsultant, prime contractor, independent contractor, sub-contractor, supplier, vendor or other private entity providing

services, material, equipment or other work for any of the activities related to the construction of the Project, except for insurance provisions and requirements of existing contracts. For insurance coverage provided under existing FDOT contracts for any work regarding the MDC Construction Easements ("Existing Coverage"), FDOT shall obtain additional insured status for MDC under the Existing Coverage ("Additional Insured Status/Existing Contracts"). FDOT shall inform MDC of any costs incurred in obtaining the Additional Insured Status/Existing Contracts, as well as any increased costs for providing any portion of the Additional Insured Coverage that exceeds FDOT's standard requirements in new contracts, and MDC agrees to compensate FDOT for same. Should MDC not agree to compensate FDOT for same, FDOT shall have no obligation to provide MDC with Additional Insured Status/Existing Contracts, or any portion of the Additional Insured Coverage that exceeds FDOT's standard requirement, whichever is applicable.

17. Post Concession Agreement. The Concession Agreement has a term of thirty-five (35) years, but the term may be extended or be subject to early termination under certain circumstances. FDOT will use reasonable efforts to provide MDC and the City advance notice of the early termination of the Concession Agreement. FDOT and MDC agree to confer on any changes to the operation and maintenance of the Project that FDOT reasonably anticipates might arise out of the take-over of the O&M of the areas identified in Section 10. of this Agreement by FDOT or the transfer of the Project to another Concessionaire.

18. Miscellaneous.

a. **Notices.** All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be delivered or sent, with copies indicated, by personal delivery, certified mail, fax or overnight delivery service to all Parties as follows (or at such other address as a party shall specify by notice given pursuant to this Section 18):

To FDOT:

Florida Department of Transportation
1000 N.W. 111th Avenue, Room 6207
Miami, Florida 33172-5800
Attention: Director of Transportation
Development

With a copy to each to:

Florida Department of Transportation
1000 N.W. 111th Avenue, Room 6207
Miami, Florida 33172-5800
Attention: District General Counsel

To the MDC:

County Manager
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2900
Miami, Florida 33128

With a copy to:

Office of the County Attorney
Stephen P. Clark Center
111 N.W. First Street, Suite 2810
Miami, Florida 33128

To the City:

City Hall
3500 Pan American Drive
Miami, FL 33133
Attention: City Manager

With a copy to:

Office of the City Attorney
444 SW 2nd Avenue, Suite 945
Miami, Florida 33130
Attention: City Attorney

Each notice shall be deemed given and received on the day of personal delivery or one business day after its delivery other than by personal delivery to the address for the respective party with the copies indicated, as provided in this Section 18.

b. **Entire Agreement.** This Agreement and the documents that are exhibits to this Agreement contain the entire agreement between the Parties with respect to the subject matter herein, and supersede any and all other prior written or oral agreements between them with respect to such subject matter.

c. **Amendment.** No amendment or modification of this Agreement shall be valid unless in writing and duly executed by the Parties. Through mutual agreement, the County Manager, District Secretary and City Manager are empowered to refine this Agreement through

minor amendments without further review by the Board of County Commissioners and the City Commission.

d. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective representatives, successors and assigns.

e. **Waiver.** Waiver by a Party of any breach of any provisions of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

f. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

g. **Construction.** In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular and the masculine, feminine and neuter genders include all other genders. The Parties agree that no single Party shall be deemed the author of this Agreement, and that the Agreement shall not be construed more or less strictly against one Party than against another.

h. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with applicable law, (b) does not alter any of the substantive rights, obligations or liabilities of any party under this Agreement, (c) confers upon the Parties the benefits intended to be conferred by the invalid provision, and (d) is mutually acceptable to the Parties; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.

i. **Absence of Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to (a) confer upon any entity or person other than the Parties and their permitted successors and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b)

authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

j. **Other Documents.** The Parties shall take all such actions and execute all such documents which may be reasonably necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement; provided, however, that the Parties acknowledge that certain additional actions by MDC and the City may require approval by the Board of County Commissioners and the City Commission, as applicable, and, to the extent such approval is required by law or ordinance, obtaining such approval shall be a condition to MDC's and the City's obligations under this Section. Notwithstanding the foregoing or any provision of this Agreement to the contrary, the obligation of MDC and the City to make payments under Sections 5 and 6 of this Agreement shall be unconditional except as provided in those Sections.

k. **Governing Law.** This Agreement and its interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall lie exclusively in Miami-Dade County, Florida.

l. **Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and which, taken together, shall be deemed to be one agreement.

m. **Binding Affect on Component Departments of MDC and the City.** MDC and the City each acknowledges and agrees that this Agreement shall constitute the binding and enforceable obligation of the various component departments of MDC and the City, respectively, including, but not limited to, the Port and MDWSD.

n. **Time of Essence.** Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

[Signature Page follows - Remainder of Page Intentionally Blank]

Dated and executed by the Parties as of _____, 2007.

Attest:

MIAMI-DADE COUNTY

A political subdivision of the State of Florida

Harvey Ruvin, CLERK

By: _____

By: _____

George M. Burgess
County Manager

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

Assistant County Attorney

Attest:

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

Executive Secretary

By: _____

John Martinez, P.E.
District Secretary

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

District General Counsel

Attest:

CITY OF MIAMI

Name/Title

By: _____

Name
Title

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

Name/Title

